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CURRENT TOPICS

One-sided Immunity

AN example of the injustice which diplomatic immunity from the normal process of law can cause was afforded in the Court of Appeal last week. In *High Commissioner for India* v. *Ghosh* (*The Times*, 18th March) the plaintiffs in the action—the HIGH COMMISSIONER, the Government of India and the Government of West Bengal—claimed the return of two sums of £75 10s. and £120 lent to Dr. S. R. GHOSH, the defendant. Alternatively they alleged that it was an implied term of the loan that the defendant would return to India within a reasonable time, and they claimed damages for his failure to do so. The defence was that the loan was repayable only upon the doctor's return to India after completion of his studies in England. Dr. Ghosh had added to his defence a counter-claim against the first two plaintiffs in respect of slanders alleged to have been uttered by two doctors at the Indian Students Hostel who were servants or agents of either of those plaintiffs. A defendant to an action brought by a diplomatically immune plaintiff submitting to the jurisdiction may plead any set-off or counter-claim against him which is an answer to the demand, but may not recover any judgment against him for the excess or raise any counter-claim being outside of and independent of the claim's subject-matter (*cf.* Annual Practice, 1959, p. 508, note (ii)). Accordingly the Court of Appeal held that the plaintiffs were entitled to claim immunity against the counter-claim for alleged slander and dismissed Dr. Ghosh's appeal against a decision of MCNAIR, J., affirming Master DIAMOND'S order that his counter-claim be struck out. In the course of his judgment JENKINS, L.J., explained that as the subject-matter of the counter-claim did not have any material bearing on the claim for money lent, diplomatic immunity could not be taken to have been waived in respect of the counter-claim. He remarked that some people might think that the law of diplomatic immunity ought to be altered but their lordships had to administer the law as it was. We consider that, immediately there has been any waiving of diplomatic immunity, all matters outstanding between parties to an action, as between them, immediately become subject to the court's jurisdiction.

Avoiding Tax Avoidance

SINCE 19th March, Treasury consent has been necessary for any issue of redeemable securities for capitalising profits or reserves even though their nominal value is less than £50,000 (*cf.* Control of Borrowing (Amendment) Order, 1959 (S.I. 1959 No. 445)). The issue of fully paid redeemable stocks of over that limit by the capitalisation of profits or

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reserves remained controlled by the Treasury for tax purposes even after the general consent under the Control of Borrowing Order, 1958, had reduced the powers of the Capital Issues Committee. It had been found that redeemable bonus issues under the former limit were being used to avoid income tax. A property holding company, for instance, was able to convert profit made on the sale of an asset into capital by means of redeemable securities. Any subsequent distribution made at the time of redemption would escape income tax. There is no justification for permitting such avoidance to continue and all such operations will now be subject to Treasury scrutiny although, we are pleased to note, not to that of the Capital Issues Committee.

The Earnings Rule

THE House of Commons again debated the merits of the earnings rule, governing the payment of National Insurance retirement pensions, before passing the requisite resolution approving the draft of the National Insurance (Earnings) Regulations, 1959. When these regulations become operative —and the intention is for them to come into effect on 20th April—the earnings level of the retirement pensioner and the widow will be increased from 50s. to 60s. a week and that of the widowed mother from 60s. to 80s. Beyond those figures there will be a deduction from the pension of sixpence in each shilling earned over the next pound of earnings after which 1s. will be deducted for every further shilling earned. The earnings rule affects only insured persons who have retired and are, if male, over sixty-five years of age but under seventy and, if female, over sixty but under sixty-five. Beyond those age limits the pension is payable in full irrespective of earnings or, indeed, of retirement. The earnings rule is one of the most disliked rules provided under the National Insurance Scheme and the Commons debate duly reflected this feeling. Any general grievance felt about such a rule is bound to tempt people to evade its application with the consequence of bringing the law itself into disrepute. Its author himself has had second thoughts about its desirability (*cf.* the broadcast of LORD BEVERIDGE printed in *The Listener*, 2nd December, 1954, pp. 939 and 940). As there appears to be no chance of the revocation of the earnings rule *in toto* in the near future we would strongly urge the Government to heed the plea of Sir JAMES DUNCAN for the assessment of earnings to be made on a yearly or half-yearly basis rather than on a weekly one.

Food for Thought

FOREIGNERS are frequently surprised by the Englishman's attitude to his animals and, if they are not examined too closely or thought about too carefully, two recent county court decisions may serve to confirm their suspicion that in this country an animal is often at least as important as a human being. In the first case, which came before His Honour Judge BLAGDEN in the Westminster County Court, it was alleged that a woman was ill after eating snails in a Soho restaurant. It was said that the snails had been affected by microbes and that they were unfit for human consumption. Section 8 of the Food and Drugs Act, 1955, provides that any person who sells any food intended for, but unfit for, human consumption shall be guilty of an offence but the learned county court judge held that this section did not enable the unfortunate lady to maintain a civil action for damages in respect of her sufferings. Apparently the law could not offer her a remedy of any kind, but the court expressed deep sympathy with her and hoped that she would enjoy better snails in future. On the other hand, where twenty-one of the plaintiff's pigs died after eating swill collected from a hospital, he recovered damages of £331 10s. in the Preston County Court. The plaintiff alleged that he had on occasion found dressings, ashes and hypodermic needles in the swill supplied to him by the defendant hospital management committee, whose secretary admitted that swill had been put into bins intended to be used for other purposes. We thought that the decision of the House of Lords in *Donoghue* v. *Stevenson* [1932] A.C. 562 had improved the position of the person who sustains injury as a result of consuming or even seeing food of an unwholesome character, but it may now be wondered (not very seriously, of course) whether their lordships went quite far enough.

Sensitive Mink

IN the well-known case of *Hollywood Silver Fox Farm, Ltd.* v. *Emmett* [1936] 2 K.B. 469 the plaintiffs carried on the business of breeding silver foxes. The defendant, an adjoining landowner, maliciously caused his son to discharge guns on his own land, but as near as possible to the plaintiffs' breeding pens, with a view to injuring the plaintiffs by interfering with the breeding of their foxes. The plaintiffs brought an action to recover damages for nuisance by noise and for an injunction. The action was successful although the firing took place on the defendant's own land over which he was entitled to shoot. This decision was distinguished by the Court of Appeal for Alberta in *Rattray* v. *Daniels* (1959), 27 W.W.R. 385. In that case the defendant took a bulldozer on to his land during the whelping season of mink in the plaintiff's mink farm situated on adjoining land and as a result some of the mink destroyed their young. The plaintiff claimed damages for nuisance created by the defendant and for negligence in the operation of the bulldozer. The learned trial judge dismissed the action and the plaintiff's appeal against that decision did not succeed. Their lordships took the view that there was no negligence in the bulldozer's operation as the defendant had muffled its noise as far as possible. With regard to nuisance, the defendant had negatived malice by showing that he could only obtain the use of the bulldozer during the whelping season, that he needed the bulldozer to level his land for business purposes, and that he had given the plaintiff one year's notice of his intention to use it at the time in question. It was decided that the defendant should not be denied such reasonable use of his land because of the delicate and sensitive nature of the business being carried on by his neighbour, the plaintiff, on his own property. The court might well have adopted the words of Lopes, L.J., in *Robinson* v. *Kilvert* (1889), 41 Ch. D. 88, where his lordship said: "A man who carries on an exceptionally delicate trade cannot complain because it is injured by his neighbour doing something lawful on his property, if it is something which would not injure anything but an exceptionally delicate trade."

The Solicitors' Journal

THE Easter holidays necessitate an alteration in the distribution arrangements for next week's issue. It will be posted *one day later* to reach subscribers on Saturday, 4th April. Subsequent issues will, as usual, be posted in time for delivery on the Friday of every week.

LIFE POLICIES AND ESTATE DUTY

In *Potter* v. *I.R.C.* [1958] S.L.T. 198, the Court of Session had to consider the arrangements made by a father for setting up his son in business. The facts had to be analysed in some detail, and a pleasant family picture emerges of the father and son together attending a board meeting of a recently formed company, which was prepared to give the son a directorship on his taking an interest to the extent of 10,000 £1 shares. The father handed to his son a cheque for £10,000 in favour of the company, and the son used this cheque to subscribe for the shares which were issued in the son's name.

Unfortunately, the sequel was less happy. The father died within five years of these transactions, and the Revenue claimed estate duty on a gift of £10,000. To this claim the son replied that the gift was not of money, but of shares; that by the date of death the shares had depreciated in value; and that the shares were not aggregable with the deceased's estate because the deceased had never had an interest in them. On this argument duty could only have been charged on the depreciated value of the shares, as an estate by itself, but the Court of Session, by a majority of three to one, rejected the argument and held that there had been a gift of £10,000.

It may seem a far cry from these facts to policies of life assurance, but the decision of the Court of Session has a very direct bearing on the treatment for estate duty of certain policy trusts, and it has caused a considerable flutter in the pigeon-holes of the life offices.

Policies as gifts *inter vivos*

In the last ten years, gifts *inter vivos* have perhaps caused more trouble, for estate duty, than any other topic. Practice notes, decisions, and legislation have followed each other with alarming contradiction, but here is an almost metaphysical problem that had largely escaped attention. "Hoping this finds you as it leaves me" is often a vain hope with gifts. If the form of the gift as it leaves my hands is different from the form in which it reaches yours, which is it that has been given? We know that it is more blessed to give than to receive, but is it the giving or the receiving that is to be blessed by a charge to estate duty?

What authority there was had previously favoured the receiving end. In *Sneddon* v. *Lord Advocate* [1954] A.C. 257; 33 A.T.C. 16, Lord Reid said: "One can figure a case where the donor hands over money with instructions to buy a particular investment with it, and the taker is obliged to follow those instructions. In such a case it might be said that the real subject of the gift is the investment."

This point of view, that the receiving end is what matters, has had enormous importance in the treatment for estate duty of certain annuities and life insurance policies. Under s. 2 (1) (*c*) of the Finance Act, 1894, duty is charged on the proceeds of a policy effected by the deceased on his own life and kept up by him for the benefit of a donee. If the policy has been taken out during the five years preceding the death, there could be an alternative claim for duty as on a gift *inter vivos* of the policy, but in the past it has made no difference which way the claim was made. If the policy is one in which the deceased never had an interest, because from its inception it was held on trust for the donee, the proceeds were not considered aggregable with the deceased's estate, whether the claim were made under s. 2 (1) (*c*), or on a gift of the policy within five years of death. The most familiar example is a policy under the Married Women's Property Act, 1882, taken out by the deceased for the benefit of his wife or child, but the same principles apply to any policy which has at all times been held on trust. Because of the benefit of non-aggregation it has become common for wealthy men to take out a policy under a deed of trust, and very large sums are sometimes paid by way of premium over a short period. It matters little how expensive, in an extreme case, the insurance may be, if the premiums paid out of what would be free estate can be converted into proceeds which form an estate by itself.

Aggregation of gifts

In cases like this it often happens that the premiums, or a large part of them, have been paid during the five years preceding the death, and the point of *Potter's* case is that it may enable the Revenue to approach the situation from a new angle. If what has been given to the donee is not the policy, but the cash which paid the premiums, then any premiums paid during the five-year period can be charged to duty as gifts *inter vivos*, and there is no possibility of claiming non-aggregation, because the deceased certainly had an interest in the cash. Occasionally it might be argued that the premiums were part of the normal and reasonable expenditure of the deceased, but this could not apply to a single-premium policy, or one where the premiums were very large.

Policies have frequently been taken out under deeds of trust to help near relatives to pay the estate duty on the deceased's other assets or gifts. If *Potter's* case opens the way to an attack on the premiums paid for these policies within five years of the death, the provision made by the deceased will frequently prove inadequate, and many well-laid schemes will go awry.

Application of Potter's case

Perhaps the best way of distinguishing the policy cases will be to argue that premiums paid to the insurance company are paid under a contract between the deceased and the company, and therefore cannot in any sense be described as gifts. In *Potter's* case, on the other hand, there was no finding of a contract between the deceased and the company issuing the shares. But this argument really begs the basic question, which is: what does the donor give when he initiates a series of operations whose end product is a benefit to the donee? When one remembers that the object of charging duty on gifts is to prevent the depletion of the free estate by last-minute bounty (the last minute being now liberally fixed at five years), it is difficult to resist the conclusion that what the deceased parts with is what counts.

The worst abuses in connection with policies have been stopped by s. 33 of the Finance Act, 1954, under which the proceeds of certain policies in which the deceased never had an interest have to be aggregated with each other. We should be sorry to see the area of non-aggregation made smaller still by the courts, and particularly where Married Women's Property Act policies are concerned, because these have so long been honoured for their combination of marital virtue with a little saving of estate duty.

J. P. L.

MEXICAN MIX-UP

THE failure of one domiciled Englishman to satisfy the courts of this country that his wife's Mexican divorce is valid and that he is therefore free to marry again is not in itself of any great interest, however much the romantic circumstances of the case may make it suitable pabulum for the popular Press. But the Laocoön-like struggles of the unfortunate Marquis of Milford Haven (*Mountbatten* v. *Mountbatten* [1959] 2 W.L.R. 128; p. 113, *ante*) have lit up a situation which, although well known to the academic lawyer, has not previously been of any great significance to the practitioner. That it will be of increasing significance, however, in this contracting world there can be no doubt.

Recognition of foreign divorce decrees

The problem, stated simply, is this: how far are the English courts to go in recognising foreign divorce decrees? Until 1953 our courts refused to recognise any foreign decree unless the foreign court had jurisdiction based on domicile, the only exception to this rule being decrees which would be recognised in the country of the parties' domicile (*Armitage* v. *A.-G.* [1906] P. 135). But, since the jurisdiction of the English courts was extended by the Matrimonial Causes Act, 1937, s. 13, and the Matrimonial Causes Act, 1950, s. 18, to cases in which the wife had been resident here for three years, regardless of her domicile, it became necessary in the interests of comity for the English courts to recognise foreign decrees founded on a similar jurisdiction: *Travers* v. *Holley* [1953] P. 246. Although it is immaterial how short the residence may be on which the foreign court bases its jurisdiction (*Arnold* v. *Arnold* [1957] P. 237), there must in fact have been a substantial period of residence comparable to our own three-year period: for example, in *Dunne* v. *Saban* [1955] P. 178 a period of ninety days' residence was held insufficient for our courts to recognise the validity of the decree.

In a patriarchal society such as ours it could never be doubted that a woman would take the domicile of her husband on marriage and lose all other: this truism was given the authority of the House of Lords in 1882 in *Harvey* v. *Farnie* 8 App. Cas. 43, and it has apparently never been questioned. When it was laid down in the House of Lords that jurisdiction in divorce cases was based on the domicile of one "married pair"—*Le Mesurier* v. *Le Mesurier* [1895] A.C. 517, at p. 540—their lordships clearly meant that to be the same thing as the domicile of the husband. Although the courts have shown willingness to recognise a wider basis for jurisdiction, they have clung rigidly to the doctrine of a unitary domicile in marriage. But unfortunately for the comity of nations other countries have different ideas on the relative status of men and women and in not a few countries—Switzerland, for example—a wife is entitled to retain or acquire a domicile quite distinct from that of her husband. In other countries, jurisdiction in matrimonial affairs is based entirely on residence and domicile is irrelevant, as in New York State. It is in such circumstances that the conflicts and the anomalies arise, as they have done in the *Mountbatten* case.

Facts of the *Mountbatten* case

Although Lord Milford Haven is and always has been domiciled in England, his wife, an American by birth, had to all intents and purposes always been a resident of New York State. They were married in New York in 1950 and they lived there during the two years they remained together, and there would seem little doubt that their short-lived marriage broke up because of the wife's refusal to return to England with her husband in 1952. If that be so, he could have divorced her for desertion in 1955 in England, but the wife started proceedings for divorce on the grounds of cruelty, desertion and adultery in New York in 1953; she abandoned them in 1954 in order that she might petition in the State of Chihuahua in the Republic of Mexico. One does not need to be an expert in the laws of New York State and Chihuahua to know that the Mexican legislation is, to put it at its lowest, more sympathetic than that of New York to the litigant who seeks a dissolution of marriage; this may or may not have been the motive for the change of venue, but however that may be Lord Milford Haven, who had entered a defence to the New York petition, did everything possible to facilitate the making of a final decree in Chihuahua.

This "facilitation" required him to do some rather curious things. The Chihuahua decree could only be made if both parties expressly submitted to the jurisdiction, and it would become final if not appealed against within twenty-four hours of notification, "notification" meaning nothing more than the reading of the decree in the presence of both parties. In order to "submit" to the jurisdiction and be "present" at the reading of the decree, Lord Milford Haven executed a power of attorney to a Mexican advocate authorising him to appear and submit to the jurisdiction and receive "notifications" in the divorce proceedings on behalf of his client. As a further act of "facilitation" he joined with his wife in the signing of a document whereby he agreed to pay her 10,000 dollars "in full and complete discharge of the husband's obligations past and future for the support and maintenance of the wife." Somewhat naturally Davies, J., considered that these documents made the Mexican divorce wholly collusive, but he did not agree with the argument put forward by counsel on behalf of the Queen's Proctor that such collusion was material to the question of recognition. If a decree is granted by a court of competent jurisdiction, and is not contrary to natural justice, it is irrelevant that the law and practice of the foreign court are different from our own.

As a result of these manœuvres the marriage was duly dissolved by the court of Chihuahua in May, 1954, and according to expert evidence adduced at the English hearing the decree was valid according to the law of New York State. Lady Milford Haven was therefore free from her marriage bond—but it seemed fairly clear that her husband was still married in the eyes of the law of his own country. If he should wish to remarry, he can do so in any country which recognises the Chihuahua decree, but if he were to return to England after re-marriage, he would be liable to be charged with bigamy. The proper remedy for this situation was for him to petition for a divorce in the English courts, but had he shut himself out from relief by his Mexican "facilitation"? Since the petition for dissolution on the ground of desertion is still on the file it would be improper to speculate on this, but there are some matters relating to the recent hearing which call for comment.

At the time of the Mexican divorce Lord Milford Haven was advised by a well-known and highly respected firm of English solicitors, a member of which was an attesting witness to the power of attorney. The financial agreement was witnessed by Lord Milford Haven's New York attorney, but

it is probably fair to assume that his English advisers also knew all about that document. At the trial the learned judge made it clear that he disapproved of the part played by the English solicitors in the Mexican divorce, saying that it was "somewhat surprising that [the petitioner's] London solicitor had been prepared to associate himself with such a venture." Is this criticism a justifiable one? Even if Davies, J., had limited himself to criticism of the advice given to Lord Milford Haven at the time of the Mexican decree, his remarks might have been less than just to the solicitors if they were made without a full knowledge of the facts. But the learned judge was not complaining about the advice given; he was deploring the action of the solicitor in "associating himself" with the execution of the power of attorney, a document which was legal and, indeed, encouraged by the Mexican courts.

Duties of solicitor in relation to foreign litigation

The question arises as to the standard of conduct required of an English solicitor acting for a client in matters relating to foreign litigation. Clearly the solicitor must not assist his client in any dishonest course, nor must he do anything to deceive the foreign court; for instance, it would be quite improper for him to allow his client to swear an affidavit which he knew to be false, whether it was to be used in proceedings here or abroad. Wisdom would require him to go further than this, and comply with the foreign rules of practice and procedure as far as his knowledge allowed. But if the law of the foreign court is completely at variance with English law, surely his duty to his client demands that he should assist him to succeed according to the *lex fori* even if that should mean the execution of documents or the performance of other acts which would offend against English legal principles. If, for example, the foreign law does not require a contract for the sale of land to be in writing, it would clearly not be wrong for an English solicitor to help his client to enforce such a contract by adducing only oral evidence; is it worse for him to witness, or even to draw up, documents which satisfy a foreign divorce law which smiles on, or perhaps even requires, what would here be called collusion, if those documents are honest and only intended for use in the foreign courts? It is difficult to see how an English solicitor could practise international law if he were to be bound by the same rules of conduct abroad as apply to him at home by virtue of his position as an officer of the English court.

The Domicile Bill

To return to the difficult problem of recognition of foreign divorce decrees, it is interesting to speculate on the probable effect of the new legislation at present before Parliament. The Domicile Bill, in the form which it has achieved after many vicissitudes (including one complete *volte-face* as the result of transatlantic pressure) may—one cannot safely be more definite—rationalise the position and render obsolete the decision in *Mountbatten*. In its present evolutionary stage cl. 2 of the Bill reads as follows:—

> "A person of or over the age of sixteen acquires a domicile in a country by residing in that country with the settled intention of making it his permanent home."

As "a person" in English law can be female as well as male, it looks very much as if this Bill may ring the death-knell of the unitary domicile in marriage. But on this clause alone it would still be open to the courts to hold, on the combined authority of *Le Mesurier* and *Harvey* v. *Farnie*, that in matrimonial causes jurisdiction must be based on the husband's domicile alone. However, under the heading "Matrimonial proceedings in case of wife's separate domicile," cl. 5 (1) of the Bill runs:—

> "Where a husband and wife are domiciled in different countries but either the husband or the wife is domiciled in England, Scotland or Northern Ireland, the High Court or, as the case may be, the Court of Session shall have the same jurisdiction to entertain any proceedings between them and shall in the exercise of that jurisdiction apply the same law, as if both were domiciled there."

This would seem to make the position quite clear: a double domicile in marriage is envisaged and the English courts are to have jurisdiction to try matrimonial causes where the wife is domiciled here. It must then follow as the night the day, on the *Travers* v. *Holley* principle, that the English courts would be forced to recognise decrees granted by the courts of the country of the wife's domicile. Applying this to the *Mountbatten* case, since Lady Mountbatten would be domiciled in New York State if this Bill became law, the Chihuahua divorce would have to be recognised as valid in this country by application of the rule in *Armitage* v. *A.-G.*

This would certainly be a goodly step in the process of rationalising international divorce law, but it has been suggested that while Parliament is about it jurisdiction in all matters affecting status—marriage, divorce, succession—should be based on nationality, as is done in the majority of countries in the continents of Europe and South America. It would be a little sad for the lawyers to say good-bye to the vertiginous doctrine of *renvoi*, but any change which would dissipate the present horrid confusion is to be welcomed provided it does no widespread injustice. The difficulty about basing jurisdiction on nationality is that it denies the individual's liberty to change the system of laws to which he is subject. Perhaps the solution lies in the compromise of acknowledging a double jurisdiction in matrimonial causes, one based on domicile and one on residence, provided always that a wife shall be able to establish a domicile separate from that of her husband. This proviso is an essential corollary of the generally accepted principle of the equality of the sexes under the law.

MARGARET PUXON.

Honours and Appointments

The following appointments have been announced by the Colonial Office recently: Mr. J. R. ASTWOOD, Deputy Clerk of the Courts, Jamaica, to be Clerk of the Courts, Jamaica; Mr. R. BATHURST BROWN, Registrar of Titles, Kenya, to be Senior Lands Officer, Kenya; Mr. R. B. DAVIES to be Deputy Commissioner of Income Tax, Mauritius; Mr. G. M. MAHON, Puisne Judge, Tanganyika, to be Chief Justice, Zanzibar; Mr. W. K. THOMSON, Deputy Registrar General, Hong Kong, to be Registrar General, Hong Kong; Mr. W. B. WILKIE, Deputy Clerk of the Courts, Jamaica, to be Clerk of the Courts, Jamaica.

Mr. ANTHONY FORTESCUE PARSONS, solicitor, of Chester, has been appointed chief assistant solicitor and superintendent registrar to Barnsley Corporation.

Mr. PETER EDWARD WHITE, solicitor, of Walsall, has been elected chairman of Walsall Junior Chamber of Commerce in succession to Mr. P. F. Smithson, solicitor.

DETINUE AND THE DOGS ACT

An action of detinue will lie where there has been a wrongful retention of the possession of the plaintiff's chattel by the defendant. As Bayley, B., found in *Gledstane* v. *Hewitt* (1831), 1 Cr. & J. 565, "the detainer is the gist of the action. The plaintiff must make out that he was entitled to the delivery of the article, and that the defendant wrongfully detained it; and if he can do that, he has done all that is necessary to maintain the action. He is not bound to show the circumstances under which the article came into the defendant's hands."

Requirements of detinue

If these requirements are examined more closely, it will be seen, first, that the detention must be adverse, i.e., there must be a withholding of the goods by the defendant who must be shown to be preventing the plaintiff from obtaining possession of them. Authority for this may be found in *Clements* v. *Flight* (1846), 16 M. & W. 42. The plaintiff sued for the return of certain scrip certificates for shares which he had deposited with the defendant by way of security. There was evidence that the defendant had withheld the certificates and prevented the plaintiff from having possession of them and these facts enabled the action in detinue to succeed as the defendant's acts constituted an adverse detention.

Of course, as "the detainer is the gist of the action," the plaintiff must show that he was entitled to immediate possession of the goods. This was stressed by the House of Lords in *Kahler* v. *Midland Bank, Ltd.* [1949] 2 All E.R. 621. In that case the defendants withheld certain share certificates which admittedly belonged to the plaintiff, but it appeared that he was not entitled to immediate possession of them by reason of certain Czechoslovakian exchange control regulations. In view of this, their lordships decided that the plaintiff's action in detinue could not succeed.

Cullen, Allen & Co. v. *Barclay* (1881), 10 L.R. Ir. 224, emphasises the fact that there must have been a demand by the plaintiff for the return of the goods before he commenced proceedings for their recovery. It is not sufficient to prove that the goods are in the defendant's possession or that he has omitted to deliver them to the plaintiff. In *Cullen, Allen & Co.* v. *Barclay*, *supra*, the parties were potato merchants and the plaintiff sued in detinue for the return of 460 sacks. His action failed as there was no evidence that the plaintiff had demanded the return of the sacks before action brought. *Detinet* means more than *tenet*.

Innocent defendants

Problems have sometimes arisen where the plaintiff's chattel was lost or stolen and it came into the hands of an innocent defendant. *Clayton* v. *Le Roy* [1911] 2 K.B. 1031 was such a case. The plaintiff's wife bought a watch from the defendant and gave it to her husband. The watch was stolen and the plaintiff notified the defendant of his misfortune. Some eight or nine years later an innocent purchaser asked the defendant to value the watch and the defendant informed the plaintiff that he could repurchase it from the innocent purchaser for about £50. The plaintiff did not reply to this letter, but a few days afterwards a clerk employed by his solicitors entered the defendant's shop and when he refused to return the watch he served him with a writ in detinue which he had taken out on behalf of the plaintiff two hours previously. A majority of the Court of Appeal decided that the action should not succeed as, at the time at which proceedings were commenced, there had been no wrongful refusal by the defendant to return the watch.

Bromilow v. *Howard*, an action heard by Mr. Registrar Lloyd Humphreys in the Bury County Court on 9th February last, is a recent example of an action in detinue where the plaintiff's goods came into the hands of an innocent purchaser. The plaintiff's Alsatian dog disappeared from home and the plaintiff reported the loss to her local police station. On the same day the dog, which was without a collar, was handed into another police station in the same county area by two young boys who said it had followed them. This was quite in order as s. 4 of the Dogs Act, 1906, which was substituted by the Dogs (Amendment) Act, 1928, provides that: "Any person . . . who takes possession of a stray dog shall forthwith either: (*a*) return the dog to its owner; or (*b*) take the dog to the police station which is nearest to the place where the dog was found and inform the police officer in charge of that station where the dog was found." The boys did not claim the dog. The police officer on duty completed the formalities of registering the dog as required by s. 3 of the 1906 Act, and two days later, in accordance with the usual practice, the animal was collected by the Manchester Dogs Home. After a further six days had elapsed, the dog was sold to the defendant for 25s.

Police powers

At first sight, this transaction would appear to have been authorised by s. 3 of the Dogs Act, 1906. That section enacts, *inter alia*, that where a police officer has reason to believe that any dog found in a highway or place of public resort is a stray dog, he may seize the animal and detain it until the owner has claimed it and paid all expenses incurred by reason of its detention (s. 3 (1)). Where any dog so seized has been detained for seven clear days after the seizure and the owner has not claimed the dog and paid the expenses incurred in connection with its detention, s. 3 (4) permits the chief officer of police to cause the dog to be sold or destroyed.

However, the plaintiff brought an action in detinue and it seems that she maintained that the defendant had wrongfully retained the animal as it was not a "stray" within s. 3 of the Act. If this was the case, the chief officer of police had no power to sell it and therefore no title had passed to the defendant. The plaintiff argued that the dog was not a "stray" as at the time at which it was found and taken to the police station it was obviously well kept in appearance.

The learned registrar rejected this contention and decided that the defendant had a good title to the dog. He took the view that a "stray" dog was "a dog which has strayed and whose owner is not immediately identifiable." There is little judicial authority as to the meaning of "stray," but what there is appears to support this definition. In *Lawrence* v. *King* (1868), L.R. 3 Q.B. 345, Blackburn, J., decided that for the purposes of s. 25 of the Highway Act, 1864, animals were straying on the highway if "they were not in the charge of someone who had control over them." In *Cooper* v. *Railway Executive* [1953] 1 W.L.R. 223 Devlin, J., held that the word "strayed" did not include cattle which broke through a fence by the use of exceptional force because they were subjected to some peculiar inducement or temptation

to try to get across it, but this finding does not assist the interpretation of the word " stray " as used in the Dogs Act, 1906.

American definitions of " stray "

Two American cases appear to be more directly in point. In the first (*E. Imbeaux Co.* v. *Severt* (1854), 9 La. Ann. 124) it was decided that a " stray " was " an animal found in an unusual place for such an animal, or an animal that has roved for a certain time in a certain place, whose owner is unknown," while in *Roberts* v. *Barnes* (1871), 27 Wis. 422, it was said that the word must be understood to mean " a wandering beast, whose owner is unknown to the person who takes it up."

Definitions contained in at least two dictionaries also suggest that the dog in question was a " stray." Jacob's Law Dictionary, which was published in England in 1810, defines " estray " as " any valuable animal that is not wild, found within a lordship, and whose owner is not known " and the Concise Oxford Dictionary says that " stray " means " wander, go aimlessly . . . get separated from flock or companions or proper place."

The point in issue in *Bromilow* v. *Howard* was not dissimilar to that which arose in the well-known case of *Phillips* v. *Brooks, Ltd.* [1919] 2 K.B. 243. The plaintiff sold some jewellery to a person whom he mistakenly believed to be Sir George Bullough. The man was allowed to take a ring from the shop but his cheque was dishonoured. He pledged the ring with the defendants from whom the plaintiff sought to recover either the ring or its value. The action failed as the contract of sale was not void *ab initio* as the plaintiff had intended to contract with the man who came into his shop. The property in the ring had therefore passed to the actual purchaser who was able to give a good title to the defendants. Likewise, the sale of the dog by the chief officer of police to the defendant could not be impeached as the requirements of the Dogs Act, 1906, had been satisfied and strictly complied with and, for this reason, the plaintiff's action in detinue could not succeed. The defendant had a good title to the dog. The facts of *Cundy* v. *Lindsay* (1878), 3 App. Cas. 459, were similar to those in *Phillips* v. *Brooks, Ltd., supra*, but in that case the House of Lords took the view that no contract of sale had been concluded. It followed that the purchaser of the goods from the plaintiffs had no property in them to transfer to the defendants who were consequently liable in an action for unlawful conversion to the extent of their value.

Assessment of damages

If an action for detinue is successful, the plaintiff may recover the goods or their value and, in either case, damages in respect of their detention. This was established by the Court of King's Bench in *Peters* v. *Heyward* (1623), 1 Cro. Jac. 682, but the damages will be nominal unless the plaintiff is able to show that he has suffered special damage by reason of the unlawful detention (see, e.g., *Williams* v. *Archer* (1847), 5 C.B. 318). As a general rule, the damages will be assessed as at the date at which the plaintiff recovered judgment, not at the time at which the defendant refused to return the plaintiff's goods (*Rosenthal* v. *Alderton & Sons, Ltd.* [1946] 1 All E.R. 583). However, where the plaintiff knew or ought to have known at an earlier date of the defendant's actual or threatened detention of his goods, and he took no action, the damages will be assessed as at that date. Authority for this proposition may be found in *Sachs* v. *Miklos* [1948] 1 All E.R. 67, where the Court of Appeal decided that as the plaintiff knew or ought to have known at an earlier date that the conversion of his furniture had taken place or was about to take place and he had made no attempt to recover his goods, the material date for the valuation of the furniture was the date of the plaintiff's knowledge or supposed knowledge of the conversion.

Specific restitution

Section 78 of the Common Law Procedure Act, 1854, deprived the defendant of his right to keep the chattel on payment of its value by giving the court discretionary power to order specific restitution. However, this power " ought not to be exercised when the chattel is an ordinary article of commerce and of no special value or interest, and not alleged to be of any special value to the plaintiff, and where damages would fully compensate " (*per* Swinfen Eady, M.R., in *Whiteleys, Ltd.* v. *Hilt* [1918] 2 K.B. 808). If the plaintiff in *Bromilow* v. *Howard* had succeeded in her contention that the defendant did not have a good title to the dog, there can be little doubt that an order for specific restitution would have been made. The fact that those proceedings were brought at all suggests that the animal was of " special value " to her.

D. G. C.

" THE SOLICITORS' JOURNAL," 26th MARCH, 1859

On the 26th March, 1859, THE SOLICITORS' JOURNAL reported an incident before Mr. Baron Bramwell: " At the Merionethshire Assizes the following scene took place at the close of a trial. The Clerk of the Court asked, 'Do you find the prisoner, David Williams, guilty or not guilty?' Foreman: 'Not Guilty.' (Great cheering which was at once suppressed.) The judge requested the officers of the court to bring any man before him whom they saw joining in the applause and he would send him to prison. His lordship then addressed the jury as follows: 'Gentlemen, you have said that you find this prisoner not guilty. Do you understand the case? Do you understand that it is your duty to say whether or not this man received his employer's moneys and applied them to his own purposes? Do you say he is not guilty of so doing?' Foreman: 'Yes, sir.' The judge (emphatically): 'Then I am thankful it is your verdict and not mine.' (Sensation.) Addressing Mr. Mathew, his lordship said, 'Are you an Englishman, sir?' Mr. Mathew: 'I am, my Lord.' Judge: 'And your firm is English, I suppose?' Mr. Mathew: 'Yes, my lord.' Judge: 'This should be a warning to Englishmen not to invest their capital in Wales.' "

Personal Notes

Mr. Thomas Craddock, clerk to the Smethwick Justices since 1945, has resigned because of ill-health.

Mr. F. S. Miles, solicitor, clerk to the magistrates at Tenbury, Worcs, retired recently after twenty-one years in office.

Mr. Stanley Edward Oswin, solicitor, of Oxford, was married recently to Miss Prudence Margaret Grimmett.

Mr. Ioan Bowen Rees, solicitor, of Preston, was married recently to Miss Margaret Wynn Meredith.

Landlord and Tenant Notebook

AGRICULTURE: CLEAR INTENTION IN NOTICES

WHILE I appreciate that those concerned with the classification of authorities must often be faced with difficulties, I am inclined to cavil at the tendency to allocate such decisions as *Frankland* v. *Capstick* [1959] 1 W.L.R. 204 (C.A.); p. 155, *ante*, and some of those cited in the course of that case, to "Agriculture." The point in issue was the sufficiency of a notice served under the Agricultural Holdings Act, 1948; but the principle applied was a principle governing all notices served by landlords on tenants and by tenants on landlords; the notice must tell the recipient, with sufficient clarity, what is expected of him.

The notion that special indulgence ought to be shown in these cases, because farmers are simple and unsophisticated people seems to be out of date; though it is not so long ago that Bankes, L.J., in his judgment in *Jones* v. *Evans* [1923] 1 K.B. 12 (C.A.)—deciding that the "particulars of claim" requirement of the Agriculture Act, 1920, s. 18 (1), then in force should not be construed strictly—gave some support for this view: "I think it must have been within the contemplation of the Legislature that the kinds of dispute to which the section relates would in many cases arise between men who did not engage legal advisers." But, apart from the fact that an earlier case, *Van Grutten* v. *Trevenen* [1902] 2 K.B. 82 (C.A.), gave us an illustration of a certain peasant shrewdness which was at one time considered characteristic of the rural population—a tenant farmer refused to accept the registered postal packet containing a notice to quit—the alleged defect in the *Frankland* v. *Capstick* notice was the result of a mistake made by legal advisers.

Notice of claim

The point decided in *Jones* v. *Evans*, *supra*, concerned the particularity required in the case of a notice of intention to claim dilapidations under the Act then in force; in *Frankland* v. *Capstick* something quite different had happened. A tenant farmer died, and his widow negotiated a surrender with the landlord, one Dr. Edward Percy Frankland of Needlehouse, Ravenstone, Westmorland. Negotiations about dilapidations and other matters were conducted by his son, one Edward Raven Percy Frankland, and, in purported compliance with the Agricultural Holdings Act, 1948, s. 70 (1) (claims not to be enforceable unless notice of intention served within two months from termination of tenancy), the solicitors who had acted for the landlord at all material times sent the widow a notice by registered post which began "As solicitors for your landlord Raven Frankland of Bowberhead, Ravenstonedale, we hereby give you notice . . . of his intention to make against you certain claims arising out of the tenancy of the . . . holding"; and a schedule of dilapidations, signed by the solicitors, was attached. The county court judge held that this notice was bad in that it asserted that Raven Frankland was the landlord.

While the Court of Appeal were unanimous in allowing the appeal there was, I suggest, some slight difference of approach between Sellers, L.J., and Roxburgh, J. (with both of whose judgments Lord Evershed, M.R., concurred).

Authorities

Three authorities were referred to by Sellers, L.J. The oldest of these dealt with a pre-Agricultural Holdings Acts notice to quit. In *Doe d. Armstrong* v. *Wilkinson* (1840), 12 Ad. & El. 743, an action for ejectment for premises at Heslington, Yorkshire, the landlord had served a notice describing the property as "all that messuage, farm, etc., situated at Dunnington, in the County of Yorks, which you now hold of me as tenant from year to year." Judgment was given against the defendant at York Assizes, and he moved for a non-suit. Refusing a rule, Denman, C.J., said: ". . . it was not suggested that the tenant held more than one farm of the lessor, or was in any way misled by the error in the description; but the learned counsel contended that the plaintiff should have been called upon to show, negatively, that the tenant was not misled; and that in the absence of such evidence he should have been non-suited . . . If the learned judge had been requested to put anything to the jury, he would have been right in asking them whether the tenant had in fact received an effectual notice, one that informed him of the landlord's intention to determine the tenancy."

In *Hankey* v. *Clavering* [1942] 2 All E.R. 311 (C.A.), on which the respondent relied, the landlord under a twenty-one years' lease from 25th December, 1934, purporting to exercise an option to determine at the seventh year by six months' notice, wrote to his tenant's solicitors on 15th January, 1940: ". . . I will be obliged if you would accept the six months' notice to terminate your client's lease which I am allowed to give on 21st June, 1941. This would mean that he would have to give up the cottage on 21st December, 1941," and asking them for an acknowledgment. None having been given, he wrote them on 5th March repeating his request; this produced a reply acknowledging both letters and stating: "Our instructions are such that we are able to inform you that the notice therein contained is properly served on us." In a claim for possession, Asquith, J., was impressed by the "any reasonable person could understand what was meant" argument, and gave judgment for the plaintiff; but the appeal was allowed, Greene, M.R., emphasising the point that such notices are of a technical nature because not consensual, and that where a document was "clear and specific, but inaccurate on some matter, such as that of date," it was not possible to ignore the inaccuracy and substitute the correct date or other particular because it appeared that the error was inserted by a slip.

The more recent *Mountford* v. *Hodkinson* [1956] 1 W.L.R. 422 (C.A.), though "applied" in *Frankland* v. *Capstick*, was actually another case in which a notice was held ineffectual. A tenant farmer who had been served with a common-law notice to quit, and whose emotions appear to have been aroused and to have had an adverse effect on his thoughts, wrote, some three days later, saying that he did not intend to go; that he would appeal against the notice and take the matter up with the agricultural executive committee; that the landlord had no grounds for evicting him. And he concluded with some threats about having the sanitary officer to the house and the milk production officer to the building. The court, while agreeing that vituperation would not in itself invalidate a notice, held that this document did not convey a clear intention to invoke the right which the Act gave, making this the test.

This "intention to invoke the right which the Act gives" was adopted as a test by Sellers, L.J., and by Roxburgh, J.,

in *Frankland* v. *Capstick*. The criticism that suggests itself is that the analogy is somewhat remote. The complaint was that the widow did not know *who* was invoking the right.

Ambiguity: *falsa demonstratio*

Another criticism that suggests itself is that while the judgment delivered by Sellers, L.J., characterised the document as "ambiguous," Roxburgh, J. (though referring to ambiguity), treated the case as one of "*falsa demonstratio non nocet.*"

As the notice did not show on its face that the author had contradicted himself (which would make it void for uncertainty: *Saunderson* v. *Piper* (1839), 5 Bing. (N.C.) 561) any ambiguity would be a latent one, so Sellers, L.J., appears to have considered that the ambiguity lay in the fact that the recipient could have read the notice as given either on behalf of Edward Raven Percy Frankland or on behalf of Edward Percy Frankland. In my submission, it is difficult to class it as a document with words equally applicable to two or more persons and thus latently ambiguous, and resort to the *falsa demonstratio* rule seems to make for a more satisfactory solution. Sellers, L.J., did indeed suggest that the county court judge had erred because he had read the "As solicitors for your landlord Raven Frankland" as if the words had been "As solicitors for Raven Frankland your landlord"; but in Roxburgh, J.'s judgment the point made was a decisive one. "In my view, having regard to the fact that she [the respondent] knew quite well from that document [the surrender signed by both parties] that her landlord was Edward P. Frankland, it is fair and reasonable to solve the ambiguity which arises by saying that the *falsa demonstratio* is in the words 'Raven Frankland' and not in the phrase 'As solicitors for your landlord'." Roxburgh, J., does speak of solving the ambiguity, but the process was, I suggest, substantially that applied in *Doe d. Armstrong* v. *Wilkinson*, *supra*, by which, to use the language of Lord Westbury in *West* v. *Lawday* (1865), 11 H.L. Cas. 375, "the entirety which has been expressly and definitely given shall not be prejudiced by an imperfect and inaccurate enumeration of the particulars." The "all that messuage, farm, etc., in the County of Yorks, which you now hold of me as tenant from year to year" was not vitiated by the "situated at Dunnington"; the "for your landlord" was not vitiated by the "Raven Frankland."

The designation of landlord

Just in case anyone should be wondering whether the widow might not have pleaded either that, for aught she knew at the time, the property had been conveyed to Raven when the notice was served, or that, as *falsa demonstratio* can operate only when *something* is correctly described, she had (since the surrender) no landlord at that time, I would recall that by the Agricultural Holdings Act, 1948, s. 94 (5), the designation of landlord shall continue to apply to the parties until the conclusion of any proceedings taken under that Act in respect of compensation. Section 57 would make the proceedings such.

R. B.

JUDGE AND JURY AND ALL

It is commonplace for firms in country towns to find that they have committed themselves to both sides in proceedings in the county court or in the magistrates' court. While one partner is talking to the plaintiff downstairs, another partner is upstairs talking to the defendant. These things have to be sorted out. It must, however, be extremely rare for one firm and, indeed, one solicitor to have represented both sides in a case in open court.

During the War, I was instructed to act by a charitable organisation which concerns itself with the welfare of the young. The story had been running for many months before it came to me. A mother, whose main fault was that life was proving too much for her, was neglecting her children. She had been helped and warned, and at long last the decision was made to take proceedings. I went into the story and prepared the case for the prosecution.

On a sunny morning in 1943 I arrived at a magistrates' court in a small town in Essex. There were three magistrates and a young woman doing the work of the clerk. I felt a little difficulty about the prosecution, because I couldn't help sharing the sympathy which my clients had for the woman we were prosecuting. She wasn't a bad sort, just rather weak-willed and very tired. I pulled my punches to a certain extent and presented what I thought to be a moderate but fair statement leading up to the fact that the time had plainly come when she must be taught some sort of a mild lesson, if only to ensure that she listened to my clients and accepted their help in future. I completed my case and sat down.

The chairman of the magistrates then called on the woman to say whatever she had to say. She stood up and there was a long silence. It grew longer and increasingly painful. Then very quietly she began to cry.

What particularly bothered me was that I knew that if I had been presenting her case, I could have made quite a good job of it. I felt a mounting impatience, an increasing desire to do it. So I got to my feet and told the chairman that while the woman seemed to be incapable of saying anything for herself, there was more to be said on her behalf even than I had said in my opening and that I felt I could help the court if they allowed me to address them again. They gave me permission and I started. After a minute I began to warm to the work. I emphasised her unhappy situation and finished up with a strongly worded plea for leniency.

When I had finished, there was another silence. The three members of the bench looked at each other and said nothing. Then the chairman looked at me and said: "You seem to know all about this case. What do you suggest we do?" I advised that I felt the facts justified a conviction, but that no penalty was called for and binding over was sufficient. This seemed to appeal to the magistrates. The chairman gave judgment in accordance with my advice.

For the third time there was a long pause. The chairman looked down at the young woman who was deputising for the clerk and she, steadily growing redder and redder, began flipping through the first thousand pages in Stone. At length she admitted it. She said: "I'm sorry, but I'm afraid I've never bound anyone over before."

The chairman looked across at me. "I think it would be as well," he said, "if you would finish the job off." So I left my seat at the advocates' table, took over the clerk's chair from the young woman and after a bit of thought, because I had never done it myself before either, I bound the defendant over.

E. A. W.

HERE AND THERE

NEW TRAVEL AGENCY

At the moment of writing the wind is blowing steady and strong out of the north-east and there is a suggestion of snow to come in the grey clouds and the piercing cold. The unhopeful are dreaming uneasily of a White Easter. Oh, to be out of England now that April's almost here, they say to themselves, and, if circumstances allow, prepare for the great adventure of Abroad. Their inward eye sees sun-soaked beaches and flower-covered slopes and incense-bearing trees and festive tables spread in the balmy open air and gondolas and fiestas, the whole stock-in-trade of the holiday industry, with its magic-carpet-cum-cinerama conception of travel. But it does sometimes happen that the carefree traveller slips through a hole in the magic carpet and is cast for more than a walking round part in the native scene. Superficially this may be an inconvenience, but it has been well said that an inconvenience is only an adventure wrongly considered. There is scope, I am sure, for a travel agency that dealt specifically and expressly and exclusively in inconvenience and adventures. The conventional agencies are overdoing spurious cut-price glossiness for the masses. Already it's a big bore. What everybody needs and what quite a lot of people consciously want is the unplanned, the unpremeditated, the unexpected. Apart from anything else, it would, if administered in a strong enough dose, provide them with conversation for the rest of their lives. But in the brief holidays at the disposal of most of us we have no time to seek out adventurous inconvenience. Then let some imaginative agency specialise in tours which guarantee floods, avalanches, blockade, restraint of princes, *force majeure*, revolution, cattle truck deportation, the fleas that tease in the High Pyrenees, wine tasting of the tar—the lot. Calamity Tours, Limited, have a splendid future before them if they got properly going.

THE NEW TOURISM

Of course, to judge from various recent items of news, some British travellers abroad manage to find adequate adventure under their own power. A thirty-two-year-old Orpington man has just been sentenced at Mannheim to penal servitude for life for a matter of murdering a policeman in the course of a bank robbery. He jumped rather harder through the magic carpet of tourism than most adventure seekers would be prepared to risk. One would recommend something more in the line of the young lady who was arrested recently at Milan on the complaint of her former fiancé who charged her with defamation, menaces and occasioning him actual bodily harm. Her Italian lawyer, visiting her in gaol, found her "in excellent health and good spirits," and well she might be, for she was allowed to send out for all her food and to spend 8,000 lire in five days. For a bottle of wine a day a girl prisoner acted as her maid. She declared that she had no complaint against the police or the Italian authorities, who finally decided not to prosecute and let her go free. Now that is much more like the sort of thing that Calamity Tours, Limited, could model one of its special trips on. It could easily provide a selection of Italian fiancés warranted to play a convincing part in the psychological release of a good row. There are lots of tense, prim, controlled English girls who would find it would do them a world of good. The quarrel could be timed to take place within the jurisdiction of a selected prison. They could be graded from one to four stars according to the restaurants in the neighbourhood, the amount which the customer was prepared to spend on sending out for meals and also taking into account the quality of the lady's maids available and whether they required to be remunerated in ordinary *chianti* or in *asti spumante*. In the interests of the tourist industry the police and the authorities could undoubtedly be persuaded to co-operate. Another experiment in the new tourism is reported from Innsbruck, where two London girls who had won a holiday in a travel agency contest were charged with stealing £15-worth of costume jewellery from a shop in Kitzbuhel. They pleaded guilty and were given suspended sentences and released at once. Calamity Tours, Limited, might make a note of that as adventure on a small scale for beginners, suitable for winding up a holiday. Another class of adventure for the company's prospectus is the romantic pursuit experimented in by a former R.A.F. officer who, having fallen in love with a Swiss heiress in England, found her whisked back home by an adamant father, flew after her to Switzerland but at her house found neither father nor daughter—only her mother and the police. Calamity Tours, Limited, could write and produce with a suitable cast half a dozen playlets on that model. Of course, there will always be the quiet, unenterprising people, who just want a quiet holiday. For them Liechtenstein (population 14,757) should be the thing for the moment. There have only been two murders in fifty-eight years there. There are twelve men and a dog in the police force. In anticipation of the next tourist season they are taking in two more recruits. Perhaps they have heard that Calamity Tours, Limited, intends to start activities there.

RICHARD ROE.

Miscellaneous

EVIDENCE INVITED ON YOUNG OFFENDERS

The Advisory Council on the Treatment of Offenders, who approved the proposals made by the Prison Commissioners in the White Paper entitled Penal Practice in a Changing Society (see p. 97, *ante*), has appointed a sub-committee, under the chairmanship of Mr. Justice Barry (who is also chairman of the council), to consider the proposals in greater detail. Anyone wishing to submit evidence for consideration of the sub-committee should send it to the secretary, Mr. E. R. Cowlyn, Home Office, Whitehall, London, S.W.1.

THE SOLICITORS ACT, 1957

On the 12th day of March, 1959, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that WILFRID JAMES RIGBY, of No. 2 The Avenue, Leigh, Lancashire, be suspended from practice as a solicitor for a period of one year from the 2nd day of April, 1959, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 12th day of March, 1959, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of BERTRAM LOVELL, of No. 8 Wrotham Road, Gravesend, Kent, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

ENFORCEMENT OF LESSEES' COVENANTS

A lecture by Mr. Michael Stranders on "The Enforcement of Lessees' Covenants" was given to The Solicitors' Managing Clerks' Association in the Old Hall, Lincoln's Inn, on 11th March. Sir George Curtis, C.B., Chief Land Registrar, was in the chair.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Prejudicial Evidence against Motorists

Sir,—We are pleased to see Mr. Tyrer's interesting letter, and to note that, in his experience, evidence of apparent consumption of alcohol is invariably excluded in police prosecutions for dangerous driving, or driving without due care and attention.

When, however, he enters a caveat to our plea that the practice, where it exists, should be stamped out, is he not, with respect, confusing cause with effect? When a charge of driving "under the influence" is preferred, proof of the consumption of alcohol or drugs is a *causa sine qua non*, but if the charge be that of driving without due care and attention or in a manner dangerous to the public, proof is derived from the manner of driving and/or its consequences; the *causa causans* is here, we think, immaterial. True, the defence may suggest many "causes" in mitigation, but we have never yet heard a motorist or his advocate explaining that the lack of care was induced by the taking of drugs or the consumption of alcohol. Indeed, we should be surprised if any prudent advocate were to adopt such a course.

Surely, if a driver has consumed such a quantity of alcohol as to "affect his judgment and to render him less careful," then he is guilty of the offence of driving under the influence of drink and should be so charged.

In general, we share the confidence of your correspondent in the ability of lay Benches, properly advised, to use their judgment in deciding upon the admissibility of evidence. Only too often, however, evidence is given before there is the chance of objecting to it; it is then impossible to tell whether or not the Bench has been influenced by it, and in the nature of things, a lay Bench is less likely to be able to put it from their minds than a trained stipendiary magistrate.

Our objection is that the practice of which we complain seems to be an attempt by the prosecution to create a new offence not sanctioned by Parliament—that of "driving without due care when apparently having consumed alcohol." If vigilance is not exercised we shall soon be hearing of charges for driving without due care "whilst suffering from in-growing toe-nails" or "when in an anxious state of mind about the result of the 3 o'clock at Goodwood." The possible result of the introduction of such irrelevant evidence is twofold: it may persuade a Bench to convict when they would otherwise not do so, or in a clear case, to impose a severer penalty than they would otherwise do.

The duty of the court is, on proper evidence, to decide whether the defendant behaved in the manner alleged and, if satisfied of this, whether such behaviour amounts to the offence charged.

W. H. CREECH & DOUGLAS.

Sturminster Newton,
Dorset.

The Solicitor's Income

Sir,—How refreshing, after reading the present correspondence on the incomes of salaried solicitors, to see the letter from Mr. John C. Morris in your Journal of 13th February which has just reached me.

It is only too obvious that the incomes of salaried solicitors in the main bear no relation to the effort and expense which is necessary to obtain qualification. Those who argue differently simply refuse to face reality. What then is the answer? Surely it is to display the initiative and enterprise suggested by Mr. Morris. If for some reason this is not practicable, then no solicitor should remain in a position which is underpaid. He should take any reasonable post which offers a higher salary. If a suitable one cannot be found in England why not try Australia, Canada, New Zealand, Northern Rhodesia, Singapore, Hong Kong, Kenya, East Africa or any other country which may offer a better opportunity? Whilst young solicitors merely complain and take no positive action will anything be done?

"NO REGRETS."

Northern Rhodesia.

Manners Wanted

Sir,—I must complain of the appalling lack of good manners of many of those solicitors who advertise in your "Appointments Vacant" columns. Having just completed National Service, after qualifying as a solicitor two years ago, I have been exploring the advertisements carried in THE SOLICITORS' JOURNAL. Of eight London firms I have written to, only three have even acknowledged my letter; in two cases, however, only to say that the position had already been filled, or that the new appointment was not to be proceeded with. The response from country solicitors is better, two replies from four applications. One letter went so far as to invite me for an interview. When, though, I told the interviewer that I had just completed National Service, he stiffened and closed the discussion by saying that by doing the service (as if I was in some way to blame for it) I had probably got out of contact with day-to-day legal topics. It afforded me no great pleasure to do National Service and, in my view, it does harm enough without, even when completed, being used against one when job hunting.

DISHEARTENED.

London, N.W.

REVIEW

Cases on Equity and Trusts. By G. W. KEETON, M.A., LL.D., of Gray's Inn, Barrister-at-Law. 1959. London: Sir Isaac Pitman & Sons, Ltd. £2 10s. net.

The primary purpose of this volume, as advertised in the preface, is to act as a companion to the author's Introduction to Equity and Law of Trusts, but the hope is there expressed that it may also prove of value to those students who use some other text-book. The first of these purposes this collection of cases will doubtless serve well enough, but otherwise it is a disappointing production. A principal objection is the wholly disproportionate space given to cases on trusts; over half the cases selected (fifty-one out of ninety-three) are on that subject, which, at this kind of level, is usually treated as a part, and a relatively small part at that, of the principles of equity. In detail also there are faults. The explanatory matter, the preface states, has been deliberately cut down to a minimum. It has indeed; less than one in every ten of the cases is explained in a note, and some of the notes are simply a catalogue of references to other cases or articles on the subject. The result of this parsimony must on occasion tend to mislead: thus, *Re Vardon's Trusts* (p. 96) bears no note pointing to the abolition of restraints on anticipation in 1949, and the reader of the report here given of *Chapman* v. *Chapman* (p. 242) is left in ignorance of the Variation of Trusts Act, 1958. The report of *Re Chesterfield's Trusts* (p. 247), admittedly not an easy case to summarise, is so short as to be unintelligible. Some collections of cases for students tend in time to become miniature text-books because of the amount of explanatory matter they contain, and that doubtless is a defect; but here the author has gone to the other extreme, so far as the reader who has not the recommended text-books open before him is concerned. Two minor points: both the cases cited in the note on p. 93 with references to the Weekly Law Reports only have been reported in the Law Reports; and the page titles on pp. 11 and 13 are not in accordance with the practice adopted in the remainder of the book.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Appointment of Infant as Director of Limited Company, etc.

Q. Halsbury's Laws of England, vol. 21, p. 185, para. 408, says: "An infant is under a general incapacity to exercise the rights of citizenship or perform civil duties; or to hold public or private offices or perform the duties incidental to them." We have been asked to advise if an infant can be appointed director of a limited company or as a member of the committee of management of an industrial and provident society. We can find no direct authority on the point, but the principle before quoted from Halsbury might be held to apply. Otherwise, presumably, there would be no restriction as to the age at which a person could be appointed a director. What is your view, please?

A. Although there is no specific authority, it is generally accepted that an infant can be a director of a company incorporated under the Companies Acts. In *Copeman* v. *William Flood & Sons, Ltd.* (1941), 24 T.C. 53, a girl of seventeen had been appointed director of a pig-dealing company. The Revenue challenged the payment of director's fees to her, on the ground that these were not wholly and exclusively laid out for the purposes of the trade, but it was never suggested that her appointment was itself invalid. In the absence of any prohibition in the articles, we consider it quite safe for an infant to be appointed director. An infant can be a member of an industrial and provident society, and unless the rules of the society provide otherwise, there is no reason why he should not also be a member of the committee of management. We consider that the principle quoted from Halsbury does not apply to officers of bodies, created under modern statutes, which have wide powers of regulating their own constitutions by their articles or rules.

Voluntary Settlement—Effect of Declaration of Trust

Q. A client has recently created a voluntary settlement of certain funds which is so worded as to include any investments conveyed, transferred or paid to and accepted by the trustees in addition to the original fund. Subsequent to the settlement the settlor has executed a declaration of trust in respect of certain further specified investments which are already registered in the names of nominees for her, and which it is convenient to leave so registered. The declaration of trust is under seal and declares that the settlor holds these investments upon trust for the trustees as an accretion to the trust fund as defined by the settlement, and that the settlor will transfer or otherwise deal with the investments in such manner as the trustees shall from time to time direct. Is it considered that this declaration of trust will rank as a perfected gift for purposes of estate duty in the event of the settlor surviving five years from the date of the declaration of trust? If not, is it considered that the desired object would be achieved if notice of the declaration of trust were given to the nominees, and directions to the companies concerned that all dividends and notices are to be sent to the trustees? It may be added that the declaration of trust is stamped with a ten-shilling deed stamp only, and the question also appears to arise as to whether this is liable to *ad valorem* stamp duty.

A. In our opinion the declaration of trust is a perfected gift as from the date of its execution and since it therefore operated as a valid gift it requires to be stamped at £2 per cent. *ad valorem*.

Trustees Conveying to Beneficiaries Properties Purchased with Trust Funds

Q. Under a settlement made in 1950 the settlor transferred certain shares, etc., to three trustees, of whom he is one, with a direction that the trustees should hold the trust funds for the benefit of such of his five adult named children and his wife as the trustees should from time to time appoint and in default of appointment for the said six persons absolutely in equal shares. For various reasons the trustees could not legally hand over cash to the beneficiaries for some years, and therefore when the settlor wanted to buy houses for occupation by his daughters, although there was no power to invest in land in the settlement, the trustees had to buy these houses in the trustees' names instead of the trustees handing over the purchase money to the daughters. The houses were conveyed to the trustees upon trust for sale. The trustees now wish to donate the houses to the daughters occupying them, and presumably the conveyance to them should be done by way of power of appointment by the trustees, and I shall be glad if you could cite a suitable precedent for this appointment and conveyance. Alternatively, is it preferable that the trustees convey the houses upon trust for sale to the daughters' husbands (or to the daughter and husband jointly), the conveyance being in consideration of a purchase price (which will have to be handed by the trustees to the daughters, who will in turn hand it back to the trustees)?

A. There can be no conveyance on sale since there is no question of any consideration being involved. The trustees should execute an ordinary conveyance in favour of each daughter. It will be recited that the daughter has become entitled in equity to the property conveyed; or, alternatively, that the property was purchased by the trustees with moneys to which she was then entitled. This will be followed by a recital that the daughter has requested the trustees to convey the property to her, which they have agreed to do. By a separate deed—it seems cleaner from the conveyancing point of view not to include this in the conveyance—the daughter can: (i) release the trustees from any liability for breach of trust occasioned by the purchase, and (ii) indemnify them against any claim respecting such breach.

Chain of Representation Broken by Intestacy

Q. My late client, Mr. *A*, was the owner of a freehold house. He died a few weeks ago, having by his will appointed his wife to be the sole executrix and beneficiary thereof. His wife took out a grant of probate, but two days after the date of the grant she died without having made an assent in her own favour. The wife has died intestate and has left two children of full age who are applying for a grant of administration. Can these two children as administrators convey the house without an assent having been made or must they apply for a grant *de bonis non* to the estate of their father before they can convey the house?

A. The chain of representation has been broken within the meaning of s. 7 (3) (*a*) of the Administration of Estates Act, 1925. The administrators of the wife are not the personal representatives of *A*. And, since no assent was made by the wife in respect of the property, the property remained vested in her as executrix. In these circumstances, the administrators cannot convey as personal representatives of *A*. Hence, they must take out a grant of administration with the will annexed *de bonis non* to the estate of *A*.

Sole Trustee's Receipt—Judicial Trustee

Q. We are acting for the purchaser of certain property. The vendor was appointed judicial trustee by an order of the Chancery Court dated 31st December, 1953, whereby he was appointed trustee upon trusts of the will of the deceased owner. The owner had died in April, 1947, and probate of her will had been granted in August, 1947, to her three executors. It appears from the abstract that a dispute arose in 1953 and one judicial trustee was appointed under the Judicial Trustee Act, 1896. Is it safe for the purchaser to accept a conveyance from the sole trustee and can he give a valid receipt for the proceeds of sale in view of s. 14 (2) of the Trustee Act, 1925? We can find no authority for accepting a conveyance from the sole trustee in these circumstances. If the judicial trustee cannot give a valid receipt how should title be made?

A. There seems to be nothing to entitle a judicial trustee—in the absence of such trustee being the public trustee or some other trust corporation—to give a valid receipt for capital moneys in accordance with s. 14 (2) of the Trustee Act, 1925, where he is a sole trustee. He would appear to be in the same position as any other trustee.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Sea Fisheries (Compensation) (Scotland) Bill [H.C.] [17th March.

Read Second Time :—

Mid-Wessex Water Bill [H.C.] [17th March.
National Assistance (Amendment) Bill [H.C.] [17th March.
Reading and Berkshire Water, &c. Bill [H.C.] [17th March.

Read Third Time :—

Electricity (Borrowing Powers) Bill [H.C.] [17th March.
Emergency Laws (Repeal) Bill [H.C.] [17th March.
Family Allowances and National Insurance Bill [H.C.] [17th March.
International Bank and Monetary Fund Bill [H.C.] [17th March.
Rights of Light Bill [H.C.] [17th March.

In Committee:—

Intestate Husband's Estate (Scotland) Bill [H.C.] [17th March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Consolidated Fund Bill [H.C.] [17th March.

To apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March, one thousand nine hundred and fifty-eight, one thousand nine hundred and fifty-nine, and one thousand nine hundred and sixty.

Read Second Time:—

Glamorgan County Council Bill [H.L.] [16th March.
Railway Clearing System Superannuation Fund Bill [H.L.] [16th March.
Tees Conservancy Bill [H.L.] [16th March.
Torquay Corporation (Water) Bill [H.C.] [17th March.

Read Third Time:—

Angle Ore and Transport Company Bill [H.L.] [16th March.

B. QUESTIONS

HIGHWAYS (LAW OF CIVIL LIABILITY)

The ATTORNEY-GENERAL said that the Law Reform Committee had not been invited to consider the law of civil liability in respect of highways. Liability for non-feasance was at present the subject of discussions between the Minister of Transport and Civil Aviation and the highway authorities' associations. [17th March.

LEGAL AID SCHEME

The ATTORNEY-GENERAL said that in its comments and recommendations on the Eighth Report of The Law Society on the Legal Aid Scheme, the Advisory Committee stated that it proposed to study further whether under present financial conditions the machinery set up by the Legal Aid and Advice Act, 1949, was failing to make legal aid and advice available to those for whom it was intended. The Lord Chancellor would consider the question of amending not only the Legal Aid (Assessment of Resources) Regulations, 1950, but also the financial provisions of the Legal Aid and Advice Act in the light of its recommendations. [17th March.

STATUTORY INSTRUMENTS

Assizes (Western Circuit) Order, 1959. (S.I. 1959 No. 408.) 5d.
Clitheroe Water (Charges) Order, 1959. (S.I. 1959 No. 391.) 5d.
Foreign Compensation (Financial Provisions) Order, 1959. (S.I. 1959 No. 403.) 5d.
Draft **Grant-Aided Secondary Schools** (Scotland) Grant Regulations, 1959. 5d.
Halifax Water Order, 1959. (S.I. 1959 No. 370.) 8d.
Import Duties (General) (No. 2) Order, 1959. (S.I. 1959 No. 391.) 5d.
Import Duties (General) (No. 3) Order, 1959. (S.I. 1959 No. 423.) 5d.
Maintenance Orders (Facilities for Enforcement) Order, 1959. (S.I. 1959 No. 377.) 6d.
Merchandise Marks (Imported Goods) (No. 1) Order, 1959. (S.I. 1959 No. 404.) 5d.
National Health Service (Constitution of Standing Advisory Committees) (Scotland) Amendment Order, 1959. (S.I. 1959 No. 400.) 5d.
National Health Service (Regional Hospital Boards and Boards of Management) (Scotland) Amendment Regulations, 1959. (S.I. 1959 No. 401.) 5d.
Naval Discipline (Relations with the Royal Australian Navy) Order, 1959. (S.I. 1959 No. 407.) 5d.
Parking Places (St. Marylebone) (No. 1) Order, 1959. (S.I. 1959 No. 429.) 1s. 1d.
Perth County Council (Allt Mor, Grandtully) Water Order, 1959. (S.I. 1959 No. 390.) 5d.
Petty Sessional Division (Lincoln, Parts of Lindsey) Order, 1959. (S.I. 1959 No. 422.) 5d.
Registration of Births, Deaths and Marriages (Special Provisions) Act, 1957 (Commencement Order), 1959. (S.I. 1959 No. 405.) 4d.
Remuneration of Teachers (Primary and Secondary Schools) Amending Order No. 2, 1959. (S.I. 1959 No. 367.) 8d.
Service Departments Registers Order, 1959. (S.I. 1959 No. 406.) 6d.
Stopping up of Highways (County of Buckingham) (No. 3) Order, 1959. (S.I. 1959 No. 385.) 5d.
Stopping up of Highways (County of Somerset) (No. 3) Order, 1959. (S.I. 1959 No. 379.) 5d.
Stopping up of Highways (West Suffolk) (No. 1) Order, 1949 (Variation) Order, 1959. (S.I. 1959 No. 378.) 5d.
Stopping up of Highways (West Suffolk) (No. 1) Order, 1951 (Variation) Order, 1959. (S.I. 1959 No. 380.) 4d.
Wages Regulation (Retail Furnishing and Allied Trades) Order, 1959. (S.I. 1959 No. 386.) 1s.
West Kent Main Sewerage Order, 1959. (S.I. 1959 No. 383.) 6d.
West of Maidenhead-Oxford Trunk Road (Sandford Link Road and Southern By-pass Extension) Order, 1959. (S.I. 1959 No. 381.) 8d.

BOOKS RECEIVED

Children and the Law. By F. T. GILES. With a foreword by the Rt. Hon. LORD GODDARD, P.C. pp. (with Index) 157. 1959. London: Penguin Books, Ltd. 3s. 6d. net.

Expropriation in Public International Law. By B. A. WORTLEY, O.B.E., LL.D., of Gray's Inn and the Northern Circuit, Barrister-at-Law. pp. xviii and (with Index) 169. 1959. London: Cambridge University Press. £1 10s. net.

Lawyer's Folly. By AUDREY HULME. pp. 191. 1959. London: Michael Joseph, Ltd. 13s. 6d. net.

Patents for Engineers. By LAURENCE H. A. CARR, M.Sc. Tech., M.I.E.E., A.R.P.S., and J. C. WOOD, LL.M., of Gray's Inn, Barrister-at-Law. pp. (with Index) 107. 1959. London: Chapman & Hall. 18s. net.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

RENT TRIBUNAL: REGISTERED RENT APPLICABLE TO SUBSEQUENT LETTINGS

De Jean *v.* Fletcher

Lord Evershed, M.R., Ormerod, L.J., and Lloyd-Jacob, J.

24th February, 1959

Appeal from West London County Court.

The defendant was the owner of residential premises which he had let furnished to tenants at a rent of £2 a week. Those tenants had applied under the Furnished Houses (Rent Control) Act, 1946, to the local rent tribunal which had, by an order of 14th December, 1955, reduced the rent to £1 a week. That rent was duly registered in the register kept under the Act by the local authority. The original tenants having left, the defendant, at the request of the plaintiffs, spent about £70 on improving the premises and then, on 7th July, 1956, let the premises to the plaintiffs at a rent of £3 a week. The defendant having determined the plaintiffs' tenancy, in these proceedings the plaintiffs sought to recover £2 a week for 98 weeks as overpaid rent. The county court judge gave judgment for the plaintiffs. The defendant appealed.

LORD EVERSHED, M.R., said that there was no doubt that "the rent payable for the premises," to use the language of s. 4 of the Act of 1946, on the face of it, was entered in the register. It seemed to him (his lordship), therefore, that the plaintiffs must be entitled to succeed, unless it could be said that the effect of any registration was limited to the duration of the particular contract which was the subject of the tribunal's determination. In his (his lordship's) judgment, however, having regard to the provisions of ss. 2, 3 and 4 of the Furnished Houses (Rent Control) Act, 1946, once, *quoad* any premises, a rent had been entered on the register kept by the local authority pursuant to the provisions of s. 3 of the Act, that became "the rent payable" for the premises until it was changed by a subsequent determination or until the period for which the entry had been made had expired, and it was not justifiable to read words into s. 4 limiting the rent payable to the rent payable during the currency of the particular contract considered by the tribunal. Accordingly, the defendant under s. 4 was not entitled to require on account of rent payment of a sum in excess of the registered rent, and he was liable to repay the overpaid rent. The appeal would therefore be dismissed.

ORMEROD, L.J., delivered a concurring judgment.

LLOYD-JACOB, J., agreed. Appeal dismissed.

APPEARANCES: The defendant in person; *J. L. Elson Rees* (*D. J. A. Griffiths*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[1 W.L.R. 341**

Chancery Division

ADVANCEMENT: FOREIGN SECURITIES REGISTERED IN WIFE'S NAME TO AVOID HUSBAND'S LIABILITY TO FOREIGN TAX: WHETHER PRESUMPTION REBUTTED

***In re* Emery's Investments Trusts; Emery *v.* Emery**

Wynn Parry, J. 27th February, 1959

Action.

The plaintiff was a British subject married to an American citizen with whom at all material times he lived in South America, where he was employed and accordingly entitled to hold American dollars. American savings bonds purchased with the husband's money were registered in the name of the wife (the husband as an alien being unable to hold these bonds) with the husband expressly named as a beneficiary with her. Later the husband changed the bonds for common stock in American securities, which were also registered in the name of the wife. The intention of the husband was that the beneficial interest in the securities should be as to one-half to the wife and the other half to him; but, in order to avoid payment of American withholding tax, to which as an alien he was liable under American federal law, no mention was made of his beneficial interest. Subsequently, the wife removed the securities and sold them. The husband claimed a declaration that at the date of their removal the wife held the securities as to one-half for him; alternatively, for the return of half of the proceeds of sale as money had and received by the wife to his use.

WYNN PARRY, J., said that he could only proceed upon the view that the husband knew that there was this withholding tax and that he, as a non-resident alien, was liable to suffer deduction of tax in respect of his beneficial interest in the securities. Indeed, the husband in his statement of claim had put this tax position in the forefront of his case. In those circumstances, it was clear that had the tax involved been United Kingdom income tax, this case would have been covered by *Gascoigne* v. *Gascoigne* [1918] 1 K.B. 223 and would have been concluded against the plaintiff. He was, of course, dealing here not with United Kingdom income tax but with the federal tax of the United States of America. There was, however, authority of the Court of Appeal which bound him in *Regazzoni* v. *K. C. Sethia* (1944), *Ltd.* [1956] 2 Q.B. 490. He need refer only to the judgment of Denning, L.J., who said: "... it seems to me that we should take notice of the laws of a friendly country, even if they are revenue laws or penal laws or political laws ... at least to this extent, that if two people knowingly agree together to break the laws of a friendly country ... then they cannot ask this court to give its aid to the enforcement of their agreement." On the alternative claim his lordship said that once the equitable presumption of advancement arose there was no room for the common-law claim based on money had and received to the use of the husband. The husband, accordingly, was not entitled to claim any share in the securities.

APPEARANCES: *H. E. Francis* (*Bull & Bull*); *E. A. Morrison* (*Malkin, Cullis & Sumption*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 461**

AGRICULTURE (SAFETY, HEALTH AND WELFARE PROVISIONS) ACT, 1956

The Ministry of Agriculture, Fisheries and Food announce that the Agriculture (Circular Saws) Regulations, 1959 (S.I. 1959 No. 427), and the Agriculture (Safeguarding of Workplaces) Regulations, 1959 (S.I. 1959 No. 428), have now been approved by both Houses of Parliament. The Saws regulations will come into force in two stages, the first being six months hence, but those dealing with Workplaces will not become operative until 1st April, 1961. The regulations apply to Great Britain, and are made under the Agriculture (Safety, Health and Welfare Provisions) Act, 1956.

VISIT TO PRISON

The Oyez Players, the dramatic club of The Solicitors' Law Stationery Society, Ltd., performed "Maiden Ladies," a farcical comedy by Guy Paxton and Edward V. Hoile, at Her Majesty's Prison at Wormwood Scrubs on 21st March. It was the club's third visit to the prison.

NOTES AND NEWS

PRACTICE NOTE

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

FEES FOR COUNSEL IN PRIVY COUNCIL

The following statement is issued by the Privy Council office : The Registrar of the Judicial Committee of the Privy Council begs to notify parties in appeals to Her Majesty in Council that the practice of allowing upon taxation of costs only 10 guineas a day as refresher fees to both senior and junior counsel is to be discontinued. On taxation of costs of appeals set down for hearing after 8th May, 1959, the registrar may in his discretion allow refresher fees to counsel in excess of 10 guineas. On refreshers which are allowed, the junior will have the usual two-thirds of the senior's fee.

Registrar.

Dated 17th March, 1959.

SOCIETIES

The BRADFORD INCORPORATED LAW SOCIETY held its annual general meeting on the 11th March. Mr. R. W. Firth, M.A., was elected president in succession to Mr. Geoffrey H. Hall, who becomes a member of the Council. Other officers elected were : Mr. T. A. Last and Mr. J. K. Read, vice-presidents ; Mr. C. P. Pickles and Mr. R. W. T. Vint re-elected joint honorary secretaries.

The LAW SOCIETY CRICKET CLUB announces that its membership is open to solicitors and articled clerks from all over the country. It is organised in London and functions chiefly in the south. Applications for membership, stating experience and ability or otherwise, should be made to the honorary secretary, Mr. T. L. Outhwaite, 9 Clements Lane, Lombard Street, London, E.C.4, telephone number Mansion House 6054. Subscription for solicitors is one guinea per annum, and for articled clerks, 15s.

Miscellaneous

THE TREASURY SOLICITOR : CHANGE OF ADDRESS

The Department of H.M. Procurator-General and Treasury Solicitor will be moving from its present address at 3 Birdcage Walk on 15th May, 1959. The main office will resume business at 35 Old Queen Street, London, S.W.1, on 19th May, and the Bona Vacantia Division will resume business at Queen Anne's Chambers, 28 Broadway, London, S.W.1, on the same date.

SOMERSET SUMMER ASSIZES

The Assizes (Western Circuit) Order, 1959 (S.I. 1959 No. 408), provides that the Summer Assizes for the County of Somerset are this year to be held at Taunton, and that the Autumn Assizes are to be held at Wells this year and in 1960, and thereafter at Taunton and Wells alternately.

SUMMER LAW COURSES

The eleventh series of annual summer courses in law will be held at the City of London College from 20th July–14th August. The courses are arranged for lawyers and law students from abroad, but are suitable as pre-study courses for English students proceeding to the study of law in the autumn, and will be under the direction of Dr. Clive M. Schmitthoff, barrister-at-law. The courses fall into two categories, viz., English Law and Comparative Law, and International Law.

NEW LORD OF APPEAL

Lord Justice Jenkins has been appointed a Lord of Appeal in Ordinary in succession to Lord Morton of Henryton, who is retiring on 5th April. Sir David Jenkins has been a Lord Justice of Appeal since 1949. He is 59.

OBITUARY

MR. J. R. GREEN

Mr. Joseph Rann Green, solicitor, of Halesowen, died on 4th March, aged 55. He was admitted in 1927.

Wills and Bequests

Mr. John Langston Millais Benest, retired solicitor, of Bournemouth, left £22,825 net.

Mr. Montague Goodman, retired solicitor, of Sevenoaks, left £66,787 net. After personal bequests he left various pecuniary legacies to several church charities.

Mr. Eric Elton Morgan, solicitor, of Shrewsbury, left £42,211 net.

PRINCIPAL ARTICLES APPEARING IN VOL. 103

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